

§ 18.57

record to which public access is restricted by law or by the terms of a protective order entered in the proceedings. This portion of the record shall be placed in a separate file and clearly marked to avoid improper disclosure and to identify it as a portion of the official record in the proceedings.

§ 18.57 Decision of the administrative law judge.

(a) *Proposed findings of fact, conclusions, and order.* Within twenty (20) days of filing of the transcript of the testimony or such additional time as the administrative law judge may allow, each party may file with the administrative law judge, subject to the judge's discretion under §18.55, proposed findings of fact, conclusions of law, and order together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the administrative law judge.* Within a reasonable time after the time allowed for the filing of the proposed findings of fact, conclusions of law, and order, or within thirty (30) days after receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the administrative law judge shall make his or her decision. The decision of the administrative law judge shall include findings of fact and conclusions of law, with reasons therefor, upon each material issue of fact or law presented on the record. The decision of the administrative law judge shall be based upon the whole record. It shall be supported by reliable and probative evidence. Such decision shall be in accordance with the regulations and rulings of the statute or regulation conferring jurisdiction.

§ 18.58 Appeals.

The procedures for appeals shall be as provided by the statute or regulation under which hearing jurisdiction is conferred. If no provision is made therefor, the decision of the administrative law judge shall become the

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final administrative decision of the Secretary.

§ 18.59 Certification of official record.

Upon timely receipt of either a notice or a petition, the Chief Administrative Law Judge shall promptly certify and file with the reviewing authority, appellate body, or appropriate United States District Court, a full, true, and correct copy of the entire record, including the transcript of proceedings.

Subpart B—Rules of Evidence

SOURCE: 55 FR 13219, Apr. 9, 1990, unless otherwise noted.

GENERAL PROVISIONS

§ 18.101 Scope.

These rules govern formal adversarial adjudications of the United States Department of Labor conducted before a presiding officer.

(a) Which are required by Act of Congress to be determined on the record after opportunity for an administrative agency hearing in accordance with the Administrative Procedure Act, 5 U.S.C. 554, 556 and 557, or

(b) Which by United States Department of Labor regulation are conducted in conformance with the foregoing provisions, to the extent and with the exceptions stated in §18.1101. *Presiding officer*, referred to in these rules as *the judge*, means an Administrative Law Judge, an agency head, or other officer who presides at the reception of evidence at a hearing in such an adjudication.

§ 18.102 Purpose and construction.

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

§ 18.103 Rulings on evidence.

(a) *Effect of erroneous ruling.* Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) *Objection.* In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) *Offer of proof.* In case the ruling is one excluding evidence, the substance of the evidence was made known to the judge by offer or was apparent from the context within which questions were asked. A substantial right of the party is affected unless it is more probably true than not true that the error did not materially contribute to the decision or order of the judge. Properly objected to evidence admitted in error does not affect a substantial right if explicitly not relied upon by the judge in support of the decision or order.

(b) *Record of offer and ruling.* The judge may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. The judge may direct the making of an offer in question and answer form.

(c) *Plain error.* Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the judge.

§ 18.104 Preliminary questions.

(a) *Questions of admissibility generally.* Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the judge, subject to the provisions of paragraph (b) of this section. In making such determination the judge is not bound by the rules of evidence except those with respect to privileges.

(b) *Relevance conditioned on fact.* When the relevancy of evidence depends upon the fulfillment of a condition of fact, the judge shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) *Weight and credibility.* This rule does not limit the right of a party to introduce evidence relevant to weight or credibility.

§ 18.105 Limited admissibility.

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the judge, upon request, shall restrict the evidence to its proper scope.

§ 18.106 Remainder of or related writings or recorded statements.

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

OFFICIAL NOTICE

§ 18.201 Official notice of adjudicative facts.

(a) *Scope of rule.* This rule governs only official notice of adjudicative facts.

(b) *Kinds of facts.* An officially noticed fact must be one not subject to reasonable dispute in that it is either:

(1) Generally known within the local area,

(2) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, or

(3) Derived from a not reasonably questioned scientific, medical or other technical process, technique, principle, or explanatory theory within the administrative agency's specialized field of knowledge.

(c) *When discretionary.* A judge may take official notice, whether requested or not.

(d) *When mandatory.* A judge shall take official notice if requested by a party and supplied with the necessary information.

(e) *Opportunity to be heard.* A party is entitled, upon timely request, to an opportunity to be heard as to the propriety of taking official notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after official notice has been taken.

(f) *Time of taking notice.* Official notice may be taken at any stage of the proceeding.